

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Buhner	Team: Squad #16	CCRB Case #: 201407016	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/12/2014 11:00 PM	Location of Incident: [REDACTED]	Precinct: 79	18 Mo. SOL 1/12/2016	EO SOL 1/12/2016	
Date/Time CV Reported Sun, 07/13/2014 4:37 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 07/13/2014 4:37 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM James Haley	10468	949076	079 PCT
2. POM Brian Alexander	00570	948599	079 PCT
3. An officer			

Officer(s)	Allegation	Investigator Recommendation
A.POM James Haley	Abuse: PO James Haley stopped the car in which § 87(2)(b) [REDACTED] was an occupant.	[REDACTED]
B.POM Brian Alexander	Abuse: PO Brian Alexander frisked § 87(2)(b) [REDACTED]	[REDACTED]
C. An officer	Abuse: An officer frisked § 87(2)(b) [REDACTED]	[REDACTED]
D. An officer	Abuse: An officer searched the car in which § 87(2)(b) [REDACTED] was an occupant.	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

On July 12, 2014, at approximately 11 p.m. in the vicinity of § 87(2)(b) in Brooklyn, § 87(2)(b) was driving his car with his music playing loudly when he noticed a black unmarked sedan turn on its' lights. § 87(2)(b) immediately stopped and turned down this music (**Allegation A and Allegation B**). Two plain clothes officers approached his vehicle. One officer (PO1) approached the driver's side and the other (PO2) approached the passenger's side. PO1 then allegedly asked § 87(2)(b) for his license, and § 87(2)(b) asked why he had been stopped. PO1 did not answer and repeated the request for his license, which § 87(2)(b) then provided.

PO1 then allegedly instructed § 87(2)(b) to exit his vehicle and to place his hands on the car. § 87(2)(b) complied, and while his hands were on the vehicle, PO2 allegedly began to pat down or search § 87(2)(b)'s pockets; he could not recall specifically if PO2 entered his pockets (**Allegation C**). § 87(2)(b) informed the officer that he did not consent to a search, and PO2 responded, "Yeah yeah, I hear you", and continued to search and/or frisk § 87(2)(b). The search/frisk lasted approximately ten seconds. PO1 then allegedly told § 87(2)(b) to go to the back of his vehicle and face away, and § 87(2)(b) complied. Meanwhile, PO2 went to the passenger side of the vehicle, opened the door, and shone his flashlight inside. PO2 allegedly checked underneath the front seats, climbed into the vehicle, and searched the rear seats and under a car seat (**Allegation D**).

§ 87(2)(b) could not see the full extent of the vehicle search, because after he had observed for about ten seconds, PO1 told him to stop looking over his shoulder, and he cooperated. After the search, § 87(2)(b) was allowed to return to his vehicle. He was not issued a summons or arrested.

The investigation was able to identify PO Brian Alexander and PO James Haley of the 79th Precinct as the officers involved in this incident, but was unable to differentiate each officer's positioning or actions during the incident.

This case was originally assigned to Inv. Chris Mills, and was reassigned to the undersigned investigator on March 31, 2015 upon Inv. Mills' departure from the agency.

Mediation and Criminal Histories

- § 87(2)(b) was offered mediation but rejected it on the basis that he wanted the officers punished.
- According to the New York City Office of the Comptroller, as of June 23, 2014, § 87(2)(b) has not filed a Notice of Claim in regards to this incident (encl. 6B)
- A search of the New York City Booking and Arraignment System indicated that § 87(2)(b) has no arrest history.

Civilian and Officer CCRB Histories

- PO James Haley has been a member of the NYPD for four years, and has 14 CCRB complaints involving five cases with no substantiated allegations. However, he has additional allegations of vehicle stops and vehicle searches, § 87(2)(b) (encl. 1A).

- PO Brian Alexander has been a member of the NYPD for four years, and has 15 CCRB complaints involving six cases with no substantiated allegations. However, he has additional allegations of a vehicle stop, a vehicle search, a frisk, and the search of a person, § 87(2)(g) (encl. 1B-1C).
- This is § 87(2)(b)'s first CCRB complaint (encl. 1D).

Potential Issues

- § 87(2)(b) provided two different incident dates and locations regarding his complaint. Initially, he stated that it occurred on July 11, 2014, in the vicinity of Nostrand Avenue and Fulton Street. However, during his sworn statement, he testified that the incident occurred on July 12, 2014, in the vicinity of Nostrand Avenue and Verona Place.
- § 87(2)(b) believed that one of the officers said his last name out loud at the conclusion of the incident, and that it was "McGilligan", or something similar sounding. However, the investigation determined that there is no member of service in the 79th Precinct named "McGilligan", and that no members of service with similar sounding names participated in the incident.
- In his initial complaint, § 87(2)(b) provided a partial license plate, either "§ 87(2)(b)" or "§ 87(2)(b)" and described the vehicle as a black, unmarked Ford. Searches for a plate matching these letters were negative; however, they revealed an unmarked black Ford Crown Victoria assigned to the 79th Precinct with the license plate § 87(2)(e), § 87(2)(b)". This vehicle was in use during the incident date and time, and was assigned to PO Haley and PO Alexander.
- Both PO Alexander and PO Haley deny have any recollection of an incident of this nature occurring on either date, and were unable to account for their whereabouts during the time of the incident.
- § 87(2)(g)

Police Documents

- § 87(2)(b) was able to obtain a partial plate number of the unmarked vehicle, stating it was either § 87(2)(b) or § 87(2)(b). A request to Fleet Services with these potential plate numbers was returned with a positive hit for plate number § 87(2)(e), § 87(2)(b) (encl. 7S).
- The Daily Vehicle Assignment Sheet indicates that RMP #0643 has plate number § 87(2)(b) (encl. 4A-4B).
- A copy of the tour 3 roll call from July 11, 2014 indicated that PO Haley, PO Ramistella, and PO Alexander worked together from 5:30 p.m. on July 11, 2014, to 2:05 a.m. on July 12, 2014, and were assigned to RMP #643. The roll call for tour 3 from July 12, 2014 indicated that PO Alexander and PO Haley were partners, and worked from 5:30 p.m. on July 12, 2014, to 2:05 a.m. on July 13, 2014, and were assigned to RMP #643. The roll call also indicated that PO Ramistella was processing an arrest during his tour, which also began at 5:30 p.m. on July 12, 2014, and ended at 2:05 a.m. on July 13, 2014 (encl. 4K, 4Y).

Findings and Recommendations

Explanation of Subject Officer Identification

- None of the officers had any recollection of interacting with § 87(2)(b) on either dates. However, § 87(2)(b) provided an accurate vehicle description, a partial license plate which belongs to a vehicle matching the description he provided, as well as accurate and detailed officer descriptions.
- Although § 87(2)(b) provided two different incident dates, he consistently stated that he only interacted with two officers. As a result, the investigation determined that the incident occurred on July 12, 2014, and as a result, involved PO Alexander and PO Haley.
- § 87(2)(b) described PO1 as a 6'-6'1" tall, 220 pound white man with black hair and black facial scruff. He was dressed in plain clothes and was approximately 25 to 27 years old. PO2 was described as a white man in plain clothes, 33-35 years old, approximately 200 pounds and 6'1"-6'2" tall with black hair. PO Alexander is § 87(2)(b). PO Haley is § 87(2)(b).

Allegations Not Pleaded

- Although § 87(2)(b) alleged that he was frisked, he could not say with certainty if an officer entered his pockets at any point during the alleged frisk. As a result, a search allegation will not be pleaded.
- Although the investigation determined that these officers conducted the vehicle stop, it could not determine whether any actions occurred subsequent to the vehicle stop that would have required the preparation of a Stop and Frisk Report. Therefore, the allegation will not be pleaded.

Allegation A- Abuse of Authority: PO James Haley stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B- Abuse of Authority: PO Brian Alexander stopped the vehicle in which § 87(2)(b) was an occupant.

It remains in dispute as to whether PO Alexander and PO Haley stopped the vehicle in which § 87(2)(b) was an occupant.

According to his sworn statement, § 87(2)(b) was in his car when he was stopped by two plain clothes officers in a black unmarked Ford. PO1 asked § 87(2)(b) for his license, and § 87(2)(b) asked why he had been stopped. PO1 did not answer and repeated the request for his license, which § 87(2)(b) then provided.

Due to issues in identifying potential subject officers, PO Haley was not interviewed at the CCRB until May 20, 2015, and PO Alexander was not interviewed at the CCRB until May 27, 2015. Neither officer had any recollection of the incident. PO Haley noted in his memo book that a car stop was conducted at 9 p.m. at Fulton Street and New York Avenue, and that it was marked uneventful. Otherwise, he did not recall any of the details of that stop. PO Alexander had the same stop noted in his memo book, and similarly did not recall any of the details.

A vehicle stop is permissible when there exists "reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime" *People v*

Spencer, 84 N.Y.2d 749 (1995) (encl. 0A-0N). A vehicle stop is also lawful if officers observe a violation of the VTL. *People v. Robinson*, 97 N.Y.2d 341 (2001) (encl. 0O-0Y).

§ 87(2)(g)

§ 87(2)(g)

Allegation C- Abuse of Authority: An officer frisked § 87(2)(b)

Allegation D- Abuse of Authority: An officer searched the vehicle in which § 87(2)(b)
was an occupant.

Although the investigation determined that PO Alexander and PO Haley stopped the vehicle in which § 87(2)(b) was an occupant, it remains in dispute if § 87(2)(b) was frisked, and if his vehicle was searched. Furthermore, without the participation of § 87(2)(b) the investigation could not determine which officer took what actions.

According to § 87(2)(b) PO1 instructed him to exit the vehicle, and after he did so, he was frisked for approximately ten seconds by PO2. After the frisk was completed, PO2 then conducted a search of § 87(2)(b)'s vehicle. Nothing was recovered, and § 87(2)(b) was allowed to return to his vehicle once the search was completed. He was not issued a summons or arrested.

PO Haley and PO Alexander both stated that on the incident date, they did not frisk or search anyone that was not arrested or summonsed. Additionally, both officers stated that they did not conduct any vehicle searches that did not involve an arrest or summons.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g) [Redacted]
[Redacted]

[Redacted]
[Redacted]
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Pod: 16

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date